

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2746 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

TILAKRAJ C SAHANI

Versus

COLLECTOR

Appearance:

MR M R Bhatt for Mr RP BHATT for Petitioners
Mr B Y Mankad, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/03/2000

ORAL JUDGEMENT

The petitioners, abovenamed have brought this petition under Articles 226 and 227 of the Constitution of India read with Section 211 of the Bombay Land Revenue Code for appropriate writ, order or direction for

quashing and setting aside the impugned notice issued by the respondent-Collector, Surat dated 27.3.1989 placed at Annexure 'C' at page 15 of the petition.

2. The petitioners' case in short is that in a public auction, the petitioners purchased the disputed property bearing survey no. 81, admeasuring 8 Acres, 14 Gunthas situated in Village Bhestan, Taluka Choryasi, Surat District in a sum of Rs.95,001/-. Accordingly the orders were passed by Special Recovery Officer, Surat on 29.11.1978 at Annexure 'A' to the petition. On the strength of the said purchase made by the petitioner in the said public auction, entry was posted in the name of the petitioners in the Revenue Record and the copy thereof is placed at Annexure 'B' to the petition. The entry was made at sr.no.906. The petitioners' claim is that permission was obtained from the Addl.Collector and competent authority, Surat under the provisions of Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976. (for short, 'the Act'), prior to the sale of the said property i.e. sometime in the year 1977. That after the purchase of the said property, the petitioners entered into an agreement with the Gujarat Industrial Development Corporation on 9.9.1979 for developing the said land for industrial use. That the land in question was put under acquisition by the Land Acquisition Officer. But the same was released and the acquisition was abandoned. That the petitioners have thereafter, developed the land and they were originally carrying on business in the name of firm M/s. Rajkumar Silk Mills manufacturing art silk and doing printing and dyeing work. That the said firm has been converted into a private limited concern. That the petitioners have invested about Rs.50 lacs so far for the said purpose.

3. The petitioners then alleged that they have received, for the first time, order dated 17.12.1983 from the Addl.Collector and Competent Authority, purporting to be an order under Section 8(4) of the said Act along with notice dated 29.12.1983 purporting to be a notice under section 9 of the said Act. The petitioners have challenged the said order and notice in appeal before the Appellate Authority under Section 33 of the Act. The petitioners also submit that they have received the notice on 14.3.1984 from the Collector, Surat asking the petitioners to show cause as to why the revenue entry No.906 referred to hereinabove for the purchase of the land in question in auction should not be cancelled. The petitioners stated that they have also received letter dated 3.7.1984 from the Addl.Mamlatdar and ALT Choryasi, Surat asking the petitioners to show cause as to why the

auction sale held on 29.11.1978 should not be treated as illegal and the land be not taken over by the Government. That the petitioners were surprised to receive a notice dated 27.3.1989 from the Collector, Surat under Section 211 of the Code whereby the petitioners were called upon to show cause as to why the auction sale held on 29.11.1978 should not be cancelled. The petitioners have been directed to attend the office of the Collector on 25.4.1989. The petitioners apprehend that the Collector is likely to pass order against the petitioners. They submit that the impugned notice dated 27.3.1989 is per-se illegal, null and void and not required to be complied with. That it is not open for the Collector after a lapse of 10 years time to review and or revise the order made by the Special Recovery Officer, Surat and set aside the auction held as aforesaid. The petitioners, therefore, challenge the aforesaid action of the respondent issuing the aforesaid notice to the petitioners under section 211 of the Code read with the provisions contained in the said Act. The petitioners, therefore, challenge the said notice issued to them.

4. At the first instance, leave to amend the petition was granted and notice was issued making it returnable on 27.4.1989. The respondent appeared and thereafter the petition was admitted. Ad-interim relief was continued under which the respondent was prevented from taking action pursuant to the notice dated 27.3.1989.

5. I have heard learned Advocates Mr M R Bhatt for the petitioners and the learned AGP Mr B Y Mankad for the State. I have also perused the papers. Since Special Civil Application No.4125/84 was ordered to be kept along with this matter, the said matter has also been placed along with this matter. However, that matter has already been disposed of by this Court long back. So far as the petitioners' case is concerned, the order at Annexure 'A' dated 29.11.1978 makes it clear that the petitioner has purchased the said property which is the subject matter of this petition under the aforesaid order of the Special Recovery Officer on payment of the consideration mentioned therein. It is therefore, clear that the public auction was held by the Special Recovery Officer and in the said public auction, the petitioner has purchased the aforesaid property and the said sale was finally approved and confirmed and appropriate orders were finally passed on 27.3.1989. The petitioners are, therefore, the purchasers of the land in dispute and appropriate certificate has been issued in favour of the petitioners in 1978. Annexure 'B' shows that the

mutation entry has been posted in the revenue record on 7.1.1979. This document also shows that the land was mutated in the name of the petitioners. Annexure 'C' is the notice dated 27.3.1989 issued by the respondent to the petitioners under section 211 of the Code. The notice says that the Special Recovery Officer has conducted a public auction and the petitioners have purchased the disputed land in the public auction. That the said action the part of the petitioners in purchasing the said land is in violation of the provisions contained in the said Act. Therefore, the petitioners were required to show cause as to why the said order of the Special Recovery Officer dated 29.11.1978 Annexure 'A' should not be quashed and set aside. The petitioners have challenged this notice at Annexure 'C' dated 27.3.1989.

6. Learned Advocate for the petitioners has argued that the superior officers working in the Revenue Department have powers to revise the earlier orders of the subordinate officers under Section 211 of the Code. However, it is submitted that these powers are to be exercised within reasonable time. That the sale has taken place in 1978 and the entry has been posted in the Revenue record in 1979 and the aforesaid notice has been issued in 1989. This would mean that the notice has been issued 10 years after the mutation of the entries in the name of the petitioners. Therefore, the respondent has not acted within the reasonable period as per the case of the petitioner.

7. In this connection, it would be relevant to consider a decision reported in the case of State of Gujarat vs. Raghav Natha, (1969) 10 GLR 992. There, it was laid down that the powers under section 211 of the Code have to be exercised within reasonable time of three months. Therefore, when the powers have been exercised after a lapse of more than 10 years, then in that event, it cannot be said that the respondent has exercised powers within the reasonable time. No explanation has been offered for non-exercise of powers within the limitation. There is no explanation as to why there was an inordinate delay in commencing the proceedings. It is the fact that public auction was undertaken by the officers and the mutation entry was posted in the revenue record. Therefore, it was well within the notice of the officers of the State that the auction was held and the property was purchased by the petitioners in 1978. It, therefore, cannot be said that the respondents did not know about the sale in question. Therefore, the delay in commencement of the proceedings under Section 211 of the

said Code is against the spirit of the principles laid down in the aforesaid decision of the Hon'ble Apex Court. Consequently, the show cause notice referred to above and placed at Annexure 'C' has to be quashed on this consideration.

8. Another aspect of the case argued on behalf of the petitioner is that the said Act of 1976 has been recently repealed by the Central Legislation. The repealed Act has made it clear that all pending matters will stand abated. Only the cases in which the State Government has taken possession in pursuance of the orders passed in the Act shall be saved. In other words, the cases in which the State Government has taken over possession will be saved but rest of the cases, will stand abated. In the present case, it is not the case of the respondent that the possession of the suit land was taken over by the State. In fact, the notice itself shows that the petitioners were in possession and are in possession. The respondent merely desires to commence the proceedings for cancellation of the sale in avour of the petitioners. This clearly indicates that the State has not taken possession of the disputed property but the petitioners continued to be in possession thereof. When the petitioners are in possession of the property in question and when they were in possession thereof on the date of the sale deed, the position is very clear that the State Government or officers of the State Government cannot initiate any proceedings under the said Act. Moreover, if any proceeding has been commenced or any proceeding is intended to be commenced, that would stand abated on account of the repeal of the said Act, Once the said proceedings stand abated, no further step can be taken pursuant to the notice in question. Therefore, the notice issued by the respondent dated 27.3.1989 Annexure 'C' cannot be implemented and, therefore, it is not legal and valid on this consideration also.

9. Therefore, the said notice is illegal on two grounds. Firstly, it is not legal because the action has not been initiated within the reasonable time. Secondly, it is not legal on the ground that the said Act has been repealed and the action of the respondent has not been saved by the present Act of repealing the earlier Act. On both the considerations, the impugned notice dated 27.3.1989 is required to be quashed and set aside and the respondents must be prevented from proceeding ahead with the said notice dated 27.3.1989.

10. In the aforesaid view of the matter, since the aforesaid notice is illegal, it cannot be implemented and

hence the following order is passed:

This petition is allowed and the impugned notice dated 27.3.1989 placed at Annexure 'C' and issued by the respondent under Section 211 of the Code is hereby ordered to be quashed and set aside. The respondent is prevented from proceeding ahead with the notice dated 27.3.1989 placed at Annexure 'C'.

Rule made absolute to the extent indicated above. In the facts and circumstances of the case, there shall be no order as to costs.

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msp.